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have different privileges and powers from those given to the roads organized under the general railroad statutes; and those roads built for service in the business in which individuals and manufacturing corporations are engaged have still further restricted powers and privileges, and we can see no reason why, in its discretion, the legislature may not, for purposes of taxation, place the railroads organized under the general railroad statutes in a class by themselves, leaving the other roads to be taxed under the general laws of the state, without violating the fundamental principles of taxation, or the fourteenth amendment to the Federal Constitution."

5. The railroads further contended that they were discriminated against for the reason that while their property was assessed at its full cash value, the rest of the property in the state was undervalued by the local assessors, and they were therefore required to pay a greater proportion of the taxes than was justly due from them.

But the court said that a law could not be considered unconstitutional simply because as a fact the officers sworn to administer it did not do their duty. If their assertion were correct that there has been an undervaluation of the other property, the railroads could at most claim relief only from the misconduct of the officers and not from the statute, which works injustice only when violated.

6. The last contention of the railroads upon which they rested their resort to the jurisdiction of the Federal court, was that there was a discrimination against them in this, that while in the assessment of personal property generally, debits are required to be deducted from credits, the statute requires the credits of the railroads to be assessed at their full value without any deduction of indebtedness owed by them. But this claim was disposed of by the court on the same ground as the one last considered, and it was held that the legislature had an undoubted right to make any class of property bear a heavier share of the burden of taxation than another class, and could, if it saw fit, lawfully reduce credits by debits in one class and not in another.

7. Finally, as to the fact of the undervaluation of other property, the court held that it had jurisdiction to determine the question, notwithstanding there was nothing in the legislation complained of contravening the Constitution of the United States. But it held that relief on this ground could be obtained only when it was shown that the undervaluation had been so habitual, systematic and intentional as to amount to fraudulent undervaluation. Reviewing the evidence in the case the court held that there was nothing in the record to show any such fraudulent conduct on the part of the local assessing officers, and the railroads were therefore entitled to no relief.

IS A VOTE BY MACHINE A CONSTITUTIONAL BALLOT?—The voting machine is now authorized by statute in about fifteen of our states as a method of conducting elections, and its use seems to be constantly increasing in popularity. The constitutionality of this method was recently challenged in the case of *People ex rel City of Detroit v. Board of Inspectors of Elections* (1905), — Mich. —, 102 N. W. Rep. 1029.

In accordance with the statute (Mich. C. L. §§ 3750-58, amended by Act

No. 234, Pub. Acts, 1903), the common council of Detroit directed that machines be used in certain election districts at the election in April, 1905. The inspectors of one of these districts refused to install the machines upon the ground that their use would be contrary to the provision of the State Constitution requiring that "All votes shall be given by ballot" except in certain specified cases. In holding that a writ of mandamus should issue to compel the installation of the machines, the Supreme Court makes use of the following language: "We regard the provision of the Constitution as a declaration of state policy assuring to the elector a secret as distinguished from an open or announced vote. * * * To say that the purpose of the framers of our constitution was not to secure a particular mode of voting secretly, but was to make manifest in the organic and continuing law a policy to be perpetuated is to give to the words of the instrument no forced or unnatural meaning." This quotation contains the kernel of the court's decision.

Whether or not voting by machine is voting by ballot depends, of course, primarily upon the meaning of the word "ballot." Taken as a term signifying any particular manner of registering a voter's will, the word is ambiguous, for historically there have been many varieties of ballot. But it is believed a study of the history of the term will show that in all times the idea of secrecy has been the one distinguishing feature of it. The earliest known use of the ballot was that by the Greek dikasts, or popular courts, which voted by means of balls of stone or wood, white signifying acquittal and black condemnation; marked shells, or ostrakoi, were used for banishing unpopular leaders. In Rome, tickets with candidates' names written upon them, boxes, inspectors, and check-lists were used as early as 139 B. C. In these early times common voting in the assemblies was by show of hands to secure public responsibility, while in cases of privilege, or in elections, it was by ballot. It is worthy of note, in passing, that we find almost the same distinction in the Michigan Constitution, and for the same reasons: votes in the legislature are to be given *viva voce*, while those in popular elections are to be given by ballot. A most curious method of voting, said to be by ballot, was that in use in Hungary about 1848. Each candidate for parliamentary honors had a large box painted some distinguishing color. As each voter entered the room alone, he was given a rod, from four to six feet in length, which he placed in the box belonging to the candidate of his choice, through a slit in the lid. Such length of the rod was required as an ingenious plan to prevent "repeating" by the use of similar rods concealed on the person of the voter. Thus, in this crude manner were secured the modern requisites of secrecy and accuracy. Without going farther into the minute history of the word, it is sufficient to say that it shows a continuous evolution if taken to signify a method of voting, but through all the successive stages the inherent principle of secrecy has been the one thing retained. So the conclusion seems fair that ballot voting is essentially secret as distinguished from open voting. And since the machine is intended to secure this result more effectively, it is to be regarded as one step, merely, in the evolution of the ballot. (II *ENCYCLOPAEDIA AMERICANA*, title "Ballot"; III *ENCYCLOPAEDIA BRITANNICA*, p. 288; I *WORDS AND PHRASES*, 680; *State v. Shaw*, 9 S. C. 94.)

That such is the true test of ballot voting has been asserted by many courts in disposing of questions relating to suffrage. Thus, the court says in *Brisbin v. Cleary*, 26 Minn. 107, "This privilege of secrecy may properly be regarded as the distinguishing feature of ballot voting, as compared with open voting, as, for instance, voting viva voce. The object of the privilege is the independence of the voter." See also, *People v. Cicotte*, 16 Mich. 283; *Williams v. Stein*, 38 Ind. 90; *State v. Shaw*, supra; *Ex parte Arnold*, 128 Mo. 256.

The question as directly involving voting machines has only twice been discussed by courts of last resort (*In re Voting Machine*, 19 R. I. 729, 36 Atl. Rep. 716, 36 L. R. A. 547; *Opinion of the Justices*, 178 Mass. 605, 60 N. E. Rep. 129, 54 L. R. A. 430); and in both cases the constitutionality of their use was upheld by divided courts, but on account of differences in the constitutions of those states from that of Michigan the decisions are not precisely in point here. In Massachusetts the requirement is that officers "shall be chosen by written votes," while in Rhode Island a provision that voting for general officers shall be by ballot is qualified by the phrase "until otherwise provided by law."

The fact that obviously the framers of the constitution had in view in the use of the word "ballot" a paper ticket, and that all contemporary legislation was enacted with a similar idea, gives rise to much discussion in the briefs in the principal case—copies of which have been furnished the writer by the respective counsel—as to whether a proper construction will not limit the constitutional provision to the exact meaning that the framers thereof had in mind. This principle is often helpful, indeed it is sometimes controlling. But it is not to be indiscriminately applied. In the present case the correct principle applicable would seem to be that stated in the language of CHIEF JUSTICE PARKER in *Henshaw v. Foster*, 26 Mass. (9 Pick.) 312, 317: "We are to suppose that those who were delegated to the great business of distributing the powers which emanated from the sovereignty of the people, and to establishment of rules for the perpetual security of the rights of persons and property, had the wisdom to adapt their language to future as well as existing emergencies; so that words competent to the then existing state of the community and at the same time capable of being expanded to embrace more extensive relations, should not be restrained to their more obvious and immediate sense, if, consistently with the general object of the authors and the true principles of the compact, they can be extended to other relations and circumstances which an improved state of society may produce."

SIGNING "AT THE END" OF A WILL.—There is a manifest tendency in some courts to take almost every case which comes before them out of the operation of the general rule of law applicable thereto, and by a process of minute differentiation, to decide it according to the particular judge's notion of what is just and fair in the particular case. While something of this sort is necessary under the rapidly changing conditions of modern society and possible under the elastic scheme of the common law, yet it is a course fraught with danger, and one which is responsible for much of the confusion and